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For meeting of September 19, 2024

September 12, 2024

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*
Acting General Counsel

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Associate General Counsel

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Assistant General Counsel

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Attorney

Subject: AO 2024-09 (Nanette Barragán and Barragán for Congress) - Draft A

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00pm (Eastern Time) on September 18, 2024.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

2
3 Rebecca J. Olson, Esq.
4 Greenberg Traurig, LLP
5 400 Capitol Mall, Suite 2400
6 Sacramento, CA 95814
7

DRAFT A

8 Dear Ms. Olson:

9 We are responding to your advisory opinion request on behalf of Congresswoman
10 Nanette Barragán and Barragán for Congress concerning the application of the Federal Election
11 Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to the use of
12 campaign funds to pay for eldercare expenses incurred by Congresswoman Barragán as the
13 primary caretaker of her mother. As explained further below, the Commission concludes that
14 Congresswoman Barragán may use campaign funds to pay certain eldercare expenses that she
15 incurs when traveling: (1) for her campaign; (2) in her official capacity as Chair of the
16 Congressional Hispanic Caucus; (3) for official business out of state or internationally, such as
17 for a Congressional Member Delegation (“CODEL”); and (4) to, from, or in Washington, D.C.
18 or her district to attend events in her official capacity as a member of Congress. The
19 Commission also concludes that Congresswoman Barragán may use campaign funds to pay
20 certain eldercare expenses that she incurs when in Washington, D.C. to cast votes in Congress.

21 ***Background***

22 The facts presented in this advisory opinion are based on your letter received on July 18,
23 2024, and email dated August 6, 2024.

24 Congresswoman Barragán serves California’s 44th Congressional District in the U.S.
25 House of Representatives.¹ Her principal campaign committee is Barragán for Congress.

¹ AOR001.

1 Congresswoman Barragán’s mother suffers from several severe health conditions.² Due
2 to her conditions, according to the request, she requires “constant round-the-clock 24-hour care
3 and supervision.”³ In late 2021, Congresswoman Barragán moved into her mother’s home in
4 Los Angeles to serve as her caregiver. Congresswoman Barragán cared for her mother and voted
5 by proxy in Congress until the option to do so ended in January 2023, at which point she
6 returned to her duties in Washington, D.C. and arranged for additional caregivers to ensure full-
7 time care for her mother. Congresswoman Barragán continues to reside in her mother’s home,
8 holds her mother’s power of attorney, and manages her mother’s care.

9 Because her mother is eligible for benefits under California’s Medi-Cal program,
10 Congresswoman Barragán has been able to secure the services of several caregivers provided by
11 Los Angeles County’s In-Home Supportive Services (“In-Home”) program and the Home and
12 Community Based Services (“Community Services”) program.⁴ Under these programs,
13 caregivers are paid hourly to care for Congresswoman Barragán’s mother when Congresswoman
14 Barragán is away from their home.⁵ Due to significant turnover among In-Home program
15 workers, however, and missed shifts for illnesses or other reasons, “it can be difficult to ensure
16 constant, continual care.”⁶ Moreover, gaps in coverage “can happen without notice.”⁷

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Congresswoman Barragán registered as a caregiver herself under the In-Home program in 2022 and provided approximately 1600 hours of care for her mother. AOR001-2.

⁶ AOR002.

⁷ *Id.*

1 Congresswoman Barragán covers gaps in coverage by either caring for her mother herself or
2 paying for a caregiver through a private agency. In 2023, Congresswoman Barragán’s out-of-
3 pocket expenses to cover gaps in her mother’s care were nearly \$27,000.

4 Congresswoman Barragán expects that gaps in coverage will continue and would like to
5 use campaign funds to pay for caregiving to cover gaps that arise when she is not able to provide
6 the care herself for campaign or officeholder-related reasons. She provides five factual
7 scenarios, which appear in the questions below.

8 ***Questions Presented***

- 9 1. *May Congresswoman Barragán use campaign funds to pay for gaps in her mother’s*
10 *caregiving when Congresswoman Barragán is in her district or traveling to other*
11 *destinations for campaign events such as fundraising events, meetings with campaign*
12 *supporters, traveling with presidential or other congressional candidates, or to the*
13 *national convention?*
14
15 2. *May Congresswoman Barragán use campaign funds to pay for gaps in her mother’s*
16 *caregiving when Congresswoman Barragán is traveling:*
17
18 a. *In her official capacity as Chair of the Congressional Hispanic Caucus?*
19
20 b. *For official business out of state or internationally, such as for a CODEL?*
21
22 c. *To, from, or in Washington, D.C. or her district to attend events in her official*
23 *capacity as a member of Congress?*
24
25 3. *May Congresswoman Barragán use campaign funds to pay for gaps in her mother’s*
26 *caregiving when Congresswoman Barragán is in Washington, D.C. to cast votes in*
27 *Congress?*
28

29 ***Legal Analysis***

- 30 1. *May Congresswoman Barragán use campaign funds to pay for gaps in her mother’s*
31 *caregiving when Congresswoman Barragán is in her district or traveling to other*
32 *destinations for campaign events such as fundraising events, meetings with campaign*
33 *supporters, traveling with presidential or other congressional candidates, or to the*
34 *national convention?*
35

1 Yes, Congresswoman Barragán may use campaign funds to pay for gaps in her mother’s
2 caregiving when Congresswoman Barragán is in her district or traveling to other destinations for
3 campaign events such as fundraising events, meetings with campaign supporters, traveling with
4 presidential or congressional candidates, or to the national convention, because these expenses
5 would not exist irrespective of Congresswoman Barragán’s campaign.

6 Under the Act and Commission regulations, a candidate and individual holding federal
7 office may use campaign funds for several specific purposes, including (1) “for otherwise
8 authorized expenditures in connection with the campaign for Federal office of the candidate or
9 individual,” (2) “for ordinary and necessary expenses incurred in connection with duties of the
10 individual as a holder of Federal office,” and (3) for “any other lawful purpose” that does not
11 convert the campaign funds to “personal use.”⁸ The Act and Commission regulations define
12 “personal use” as the use of campaign funds “to fulfill any commitment, obligation, or expense
13 of a person that would exist irrespective of the candidate’s election campaign or individual’s
14 duties as a holder of Federal office.”⁹

15 The Act and Commission regulations provide a non-exhaustive list of expenses that,
16 when paid using campaign funds, constitute *per se* personal use.¹⁰ For expenses not included on
17 this list — such as eldercare expenses — the Commission determines, on a case-by-case basis,
18 whether the use is a prohibited “personal use.”¹¹ When the Commission engages in a case-by-

⁸ 52 U.S.C. § 30114(a)(1)-(2), (a)(6); *see also* 11 C.F.R. § 113.2(a), (e).

⁹ 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.5(g)(1).

¹⁰ *See* 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

¹¹ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

1 case determination, it does so in light of its “long-standing opinion that candidates have wide
2 discretion over the use of campaign funds.”¹²

3 Although the Commission has not previously addressed in advisory opinions the use of
4 campaign funds to pay eldercare expenses, the Commission has considered the use of campaign
5 funds in the context of childcare expenses. The Commission has approved the use of campaign
6 funds to pay candidates’ childcare expenses incurred when the candidates travel for their own
7 campaigns,¹³ and when their campaign responsibilities and activities otherwise prevent them
8 from caring for their children themselves.¹⁴ In these advisory opinions, the Commission
9 concluded that the candidates could use campaign funds to pay childcare expenses to the extent
10 that the expenses were a “direct result of campaign activity,” because such expenses would not
11 have existed irrespective of the candidate’s campaign.¹⁵

12 Here, similarly, Congresswoman Barragán’s campaign activities as described in the
13 request will require her to be away from home from time to time. As her mother’s primary

¹² Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7867 (Feb. 9, 1995).

¹³ Advisory Opinion 2022-07 (Swalwell) at 3 (concluding that candidate could use campaign funds to pay childcare expenses incurred when candidate travels for own campaign to extent expenses are direct result of candidate’s campaign travel, because expenses “would not have existed irrespective of the candidates’ campaigns”); Advisory Opinion 1995-42 (McCrery) at 2 (concluding that candidate could use campaign funds to pay childcare expenses resulting from candidate’s and spouse’s attendance at campaign events because “the childcare expenses [were] incurred only as a direct result of campaign activity and would not otherwise exist”).

¹⁴ Advisory Opinion 2018-06 (Liuba for Congress) at 3 (concluding that candidate who had given up in-home consulting to campaign for Congress could use campaign funds to pay childcare expenses “incurred as a direct result of campaign activity, [because the expenses] would not exist irrespective of” campaign); Advisory Opinion 2019-13 (MJ for Texas) at 3 (concluding that candidate who had left her job to campaign full-time could use campaign funds to pay children’s daycare expenses “to the extent they are a direct result of campaign activity, [because the expenses] would not exist irrespective of” campaign).

¹⁵ Advisory Opinion 2022-07 (Swalwell) at 3-4; Advisory Opinion 2019-13 (MJ for Texas) at 3; Advisory Opinion 2018-07 (Liuba for Congress) at 3; Advisory Opinion 1995-42 (McCrery) at 2; *c.f.* Advisory Opinion 1995-20 (Roemer) at 2 (approving use of campaign funds to pay expenses of candidate’s children to travel with candidate and spouse to campaign events, where such travel is “only required because of the campaign”).

1 caregiver, Congresswoman Barragán is responsible for ensuring that her mother receives the
2 necessary care during those times. When gaps arise in care previously arranged through the In-
3 Home and Community Service programs and Congresswoman Barragán's campaign activities
4 prevent her from caring for her mother herself, the additional expenses that she incurs in
5 obtaining alternative care for her mother are a direct result of those campaign activities.
6 Consistent with the Commission's conclusions in the childcare advisory opinions discussed
7 above, the Commission concludes that Congresswoman Barragán may use campaign funds to
8 pay the additional eldercare expenses that she incurs because those expenses would not exist
9 irrespective of her campaign.

10 2. *May Congresswoman Barragán use campaign funds to pay for gaps in her mother's*
11 *caregiving when Congresswoman Barragán is traveling:*
12

- 13 a. *In her official capacity as Chair of the Congressional Hispanic Caucus?*
14
15 b. *For official business out of state or internationally, such as for a CODEL?*
16
17 c. *To, from, or in Washington, D.C. or her district to attend events in her official*
18 *capacity as a member of Congress?*
19

20 Yes, Congresswoman Barragán may use campaign funds to pay to fill gaps in her
21 mother's caregiving that arise when Congresswoman Barragán travels in each of these scenarios.
22 To the extent that Congresswoman Barragán travels to attend events that are directly connected
23 to her duties as a federal officeholder and is unable as a direct result of such travel to fill gaps
24 that arise in her mother's care, the additional expenses would not exist irrespective of
25 Congresswoman Barragán's duties as a federal officeholder. As such, the use of campaign funds
26 to pay the expenses would not convert the funds to personal use.

1 Although, as noted above, the Commission has previously approved the use of campaign
2 funds to pay a candidate’s childcare expenses that are a “direct result of campaign activity,”¹⁶ the
3 Commission has not previously opined on the use of campaign funds to pay dependent care
4 expenses resulting from an individual’s duties as a federal officeholder.¹⁷ In the travel context,
5 however, the Commission has concluded that Members of Congress may use campaign funds to
6 pay for their children to accompany them when the Members travel to events in direct
7 connection with their duties as federal officeholders.¹⁸

8 Here, Congresswoman Barragán seeks to take the analysis a step further by asking if she
9 may use campaign funds to pay expenses arising from gaps in her mother’s care that occur when
10 Congresswoman Barragán is traveling in direct connection with her duties as a federal
11 officeholder, rather than for her mother to accompany her on that travel. The Commission
12 analyzes this question under 52 U.S.C. § 30114(a)(6) (authorizing the use of campaign funds
13 “for any other lawful purpose unless” the funds are “used to fulfill any commitment, obligation,
14 or expense of a person that would exist irrespective of . . . the individual’s duties as a holder of
15 Federal office”).¹⁹

¹⁶ Advisory Opinion 2022-07 (Swalwell); Advisory Opinion 1995-42 (McCrery).

¹⁷ In Advisory Opinion 2022-07 (Swalwell), the Commission considered whether a member of Congress could use campaign funds to pay childcare expenses incurred when he travels for other campaigns or at the request of foreign governments or other entities. The Commission was unable to render an advisory opinion by the required four affirmative votes on these questions.

¹⁸ Advisory Opinion 1997-02 (Skaggs/LaHood) at 2 (concluding that Members of Congress may use campaign funds to pay for their children to accompany them when traveling to official congressional retreat); Advisory Opinion 2005-09 (Dodd) at 3 (approving use of campaign funds to pay travel expenses of Senator’s minor children to accompany Senator and spouse when traveling to functions directly connected to Senator’s *bona fide* official responsibilities).

¹⁹ 52 U.S.C. § 30114(a)(6), (b)(2).

1 According to the advisory opinion request, Congresswoman Barragán’s mother requires
2 “constant round-the-clock 24-hour care and supervision.”²⁰ In late 2021, Congresswoman
3 Barragán moved into her mother’s home in Los Angeles to provide that care. Congresswoman
4 Barragán cared for her mother and voted by proxy in Congress until the option to do so ended in
5 January 2023, at which point she returned to her duties in Washington, D.C. and arranged for
6 additional caregivers for her mother. Congresswoman Barragán continues to reside at her
7 mother’s home, however, holds her mother’s power of attorney, and is responsible for managing
8 her mother’s care.

9 The Commission recently concluded that Congresswoman Barragán may use campaign
10 funds to pay for travel to attend certain Congressional Hispanic Caucus events in her official
11 capacity as Caucus Chair because the events were directly connected to her duties as a federal
12 officeholder.²¹ Thus, when gaps arise in her mother’s care that Congresswoman Barragán is
13 unable to fill herself as a direct result of such travel, the additional expenses that she incurs to fill
14 those gaps would not exist irrespective of her duties as a federal officeholder. Accordingly, the
15 Commission concludes that Congresswoman Barragán’s use of campaign funds to fill those gaps
16 would not be a prohibited conversion of campaign funds to personal use.

17 The same analysis applies to Congresswoman Barragán’s travel in her official capacity
18 out of state or internationally, such as for a CODEL,²² and when traveling to, from, or in

²⁰ AOR001.

²¹ Advisory Opinion 2023-01 (Barragán) at 1-2.

²² CODELs are “official travel to a foreign country” and must be authorized by the Speaker of the House or a committee chair. House Ethics Manual, U.S. House of Representatives Committee on Ethics at 106 (Dec. 2022), <https://ethics.house.gov/sites/ethics.house.gov/files/documents/Dec%202022%20House%20Ethics%20Manual%20website%20version.pdf>.

1 Washington, D.C. or her district to attend events in her official capacity as a member of
2 Congress. To the extent that Congresswoman Barragán travels to attend events that are directly
3 connected to her duties as a federal officeholder and is unable as a direct result of such travel to
4 fill gaps that arise in her mother's care, the additional expenses that she incurs to fill those gaps
5 would not exist irrespective of her duties as a federal officeholder. Accordingly, the use of
6 campaign funds to fill those gaps would not be personal use.

7 3. *May Congresswoman Barragán use campaign funds to pay for gaps in her mother's*
8 *caregiving when Congresswoman Barragán is in Washington, D.C. to cast votes in*
9 *Congress?*
10

11 Yes, Congresswoman Barragán may use campaign funds to pay to fill gaps in her
12 mother's caregiving when Congresswoman Barragán is unable to fill the gaps herself as a direct
13 result of her being in Washington D.C. to cast votes in Congress.

14 The Commission has long recognized that “[l]egislation is the principal *bona fide* official
15 responsibility of each Member of Congress.”²³ The Commission has also recognized the
16 important nexus between policy matters and officeholder duties.²⁴ Thus, when Congresswoman
17 Barragán is in Washington D.C. to vote on policy or legislation and, as a direct result, is unable
18 to fill gaps in her mother's care, the additional caregiving expenses that she incurs would not
19 exist irrespective of her duties as a federal officeholder. Accordingly, the use of campaign funds
20 to fill those gaps would not be a prohibited conversion to personal use.

²³ Advisory Opinion 1997-02 (Skaggs/LaHood) at 4.

²⁴ Advisory Opinion 2023-01 (Barragán) at 6 (concluding that Congressional Hispanic Caucus events were directly connected to requestor's duties as federal officeholder because they were designed to address “legislative and policy work of the [Caucus] and its members”); Advisory Opinion 1996-45 (Roybal-Allard) at 2 (concluding that community service event was directly connected to requestor's duties as federal officeholder given its “direct relationship to public policy matters that are a concern to Members of Congress”).

Chairman

²⁶ See *id.* § 30108(c)(1)(B).